IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1585 OF 2006

Syndicate Bank Ltd. ..Petitioners

Vs.

State of Maharashtra ..Respondents

Mr.R.S.Pai i/b M/s.Sanjay Udeshi and Co. for the petitioner

Ms.Lata Desai for respondent no.2

Mr.K.V.Saste, A.P.P. for the State

CORAM : J.N.PATEL, J

DATED : 23RD JANUARY, 2007

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing.

2. Heard the learned counsel for the parties.

3. The complainant respondent no.2 has filed a complaint against the petitioners for having committed offence under clause 42 for contravention

of Clause 25(2) of the Private Security Guards (Regulation of Employment & Welfare) Scheme - 2002 read with section 3(3) of Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981.

4. It is the case of the complainant who is the Inspector appointed under section 16 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 that the respondents (accused no.1 to 4) being the principal employer within the meaning of the said Act and the Scheme have engaged Security Guards in contravention of Sub-Section 2 of Clause 25 which was noticed by him on his visit to the establishment of the accused on various occasions and that as the accused persons have failed to engage Security Guards allotted to them on the board under the provisions of the scheme, they have contravened the provisions of Clause 25(2) and committed offence under the said clause read with Clause 42 of the Scheme and, therefore, the court may proceed against them in accordance with law.

5 The petitioners have challenged the order of issuance of process by preferring a revision before the Court of Sessions for Greater Mumbai which came to be registered as Criminal Revision Application No.1 of 2006. The learned Additional Sessions Judge by her judgment and order dt.9.5.06 dismissed the revision for the reason stated in the impugned order. The learned Addl.Sessions Judge observed that the name of Syndicate Bank was included in the abovesaid Exemption Notification, however, after it was pointed out to the Government that Syndicate Bank is Registered Principal Employer of the Board, the Government has rightly deleted the name of M/s.Syndicate Bank from the said Exemption Notification vide its corrigendum dated 04.03.2004 and, therefore, the provisions of the said Act and the Scheme framed thereunder are squarely applicable to the Establishment of the petitioner and, therefore, the learned Additional Sessions Judge found that there is no reason to interfere with the proceedings initiated by the complainant.

6. The learned counsel for the petitioner

submitted that apart from the maintainability of the complainant, the complainant has impleaded all the officials of the bank who were not concerned with the establishment where the alleged breach / contravention of the provisions of the Act and the Scheme is said to have been committed and, therefore, the prosecution of all the officials of the bank is not justified.

7. This contention is strongly defended by the respondent (original complainant) on the ground that the principal employer is the Syndicate Bank and therefore, all these persons who were incharge / responsible for the day-to-day affairs of the bank are vicarously liable and, therefore, the complainant was justified in arraigning all of them as accused in his complaint.

8. The key issue which is required to be decided in the complaint is as to who can be held liable for the alleged breach / contravention of the provisions of the said act and the scheme framed thereunder.

9. The learned counsel for the petitioners has drawn the attention of this court to a recent decision which is rendered by this court in the case of **New India Assurance Company Ltd & Ors. vs. State of Maharashtra & Ors. reported in 2006 III CLR 470** and submitted that all the petitioners who were made accused in the case cannot be prosecuted and at the most the prosecution can go against the principal employer who is the concerned Chairman and Managing Director of the petitioner no.1 i.e. of the establishment where the breach has been noted by the complainant Inspector during his visits.

10. After going through the complaint and the impugned order, this court is of the view that the issue is a question of fact which requires to be decided after the complainant is allowed to lead evidence and, therefore, this court is not inclined to interfere with the impugned order. Probably, before the Court of Sessions, issuance of process was sought to be quashed on the ground that the establishment was duly exempted and the said issue of liability of the officials of the bank was not

executed. Though the issue is not agitated, still there is no legal impediment in the view of this court to consider it. It is already observed that there is no question of fact which will have to be determined on the basis of evidence. It would be proper that the complaint is allowed to be prosecuted.

11. The learned counsel for the petitioner submitted that as most of the original petitioners i.e. accused no.2 to 5 are officials of the bank who are subject to retirement, transfer and so on, their personal presence before the learned Magistrate be exempted as the bank would be duly represented by an advocate.

12. The learned counsel for the respondent (original complainant) has not objected if the officials of the petitioner no.1 (original accused no.1) are exempted from prosecution. In view of this, this court exempts the petitioner nos. 2 to 4 (orig.accused nos.2 to 4) from personally appearing on the condition that they will be duly represented by an Authorised Agent on all the dates

of hearing. The petitioners do not dispute the identity of the accused persons and claim any privilege, if evidence is recorded in their absence. It will be open for the trial court to summon the accused, if required during the trial for recording statement of the accused. Petition stands disposed of. Needless to state that this court has not disposed of the issue in controversy on merits and it has been left to the trial court and therefore, all contentions raised in the petition are kept open. Rule discharged.

(SHRI J.N. PATEL, J)